HIEW KIM SWEE v. G. C. GOMEZ

[A. C. J. (Thomson J.) July 13, 1955]

[Ipoh — Civil Appeal No. 8 of 1955]

Courts Ordinance, 1948, ss. 69 and 70(4) — Jurisdiction of Magistrate's Court — Action or Suit for recovery of immovable property — Jurisdiction excluded where in the opinion of the Court there is a bona fide question of title involved — Question not to be decided on the pleadings alone.

Landlord and Tenant — Alleged agreement of sub-tenancy — Termination of sub-tenancy — Estoppel.

The principal question raised in this appeal was whether the Magistrate's Court had jurisdiction to hear the case. The respondent in this case claimed possession of a portion of premises at No. 22 Tanah Rata, Cameron Highlands, which was in the occupation of the appellant. In his statement of claim the respondent had averred that he was the chief-tenant of the premises and that the appellant was his subtenant in respect of the portion of the premises. The appellant in his statement of defence denied that the respondent was the chief-tenant of the premises and stated that he obtained the tenancy of the premises through the late C. B. Gomez "who was the chief-tenant of the premises."

Held: (1) the question as to whether there is a *bona fide* question of title involved, is not to be decided on the pleadings alone but on the proceedings as a whole; (2) although on the face of the pleadings in this case there appeared to be a question of title involved, the evidence in the case did not show that there was in fact any dispute as to title and therefore the Magistrate's Court had jurisdiction to hear and determine the case.

Cases referred to:—

(1) *Rees v. Davies* (1858) 4 C.B. (N.S.) 56.
(2) *Millett v. Ballard* (1904) 2 K.B. 598.
(3) *Tomkins v. Jones* (1889) 22 Q.B.D. 599.
(4) *Tinniswood v. Pattison* (1846) 3 C.B. 243.
(5) *Timothy v. Farmer* (1849) 7 C.B. 814.
(6) *Lea v. Moore* (1955) 1 W.L.R. 33, 41.
(7) *Howorth v. Sutcliffe* (1895) 2 Q.B.D. 358, 364.
(8) *Lloyd v. Jones* (1848) 6 C.B. 81.
(9) *In re Fearon v. Nowall* (1848) 17 L.J.Q.B. 161.
(10) *Pearson v. Glassbrook* (1867) L.R. 3 Ex. 27, 29.
(11) *Re Welsh Brick Industries Ltd.* (1946) 2 All E.R. 197.

CIVIL APPEAL.

S. K. Das for the appellant.

R. R. Chelliah for the respondent.

Thomson J. : — This is an appeal from a decision of the Magistrate at Cameron Highlands. In fact, the trial was conducted by a Sessions Court President but it is clear from the record that he was sitting as a Magistrate in the Magistrate's Court.

[His Lordship then dealt with the facts of the case which are not relevant for the purposes of this report and continued:]

The Grounds of Appeal may be summarised under three heads :—

(i) that the Court had no jurisdiction in the matter;
(ii) that a number of the Magistrate's findings of fact were wrong; and
(iii) that in all the circumstances of the case the plaintiff was estopped from setting up his title in the proceedings.

With regard to the second group of Grounds of Appeal, I have already dealt with these as far as I consider necessary.

With regard to the first Ground of Appeal the question turns on the interpretation of certain sections of the Courts Ordinance and more particularly of section 70(4) of that Ordinance.

Section 90 provides that subject to the limitations contained in the Ordinance a First Class Magistrate shall have jurisdiction to try all actions and suits of a civil nature where the value of the subject-matter does not exceed $1,000.

Section 69, as modified in its application to Magistrates' Courts by section 93, provides that Magistrates' Courts shall have no jurisdiction in proceedings of a civil nature "relating to immovable property except as provided in section 70 of this Ordinance."

The relevant portions of section 70, again as modified by section 93, read as follows :—

"70. (1) Subject to the provisions of sub-sections ..... (4) of this section, a (Magistrate's) Court shall have jurisdiction to hear and determine any action or suit for the recovery of immovable property. . . . . .

(4) . . . . . such jurisdiction shall not be exercised in any case where, in the opinion of the Court, there is a *bona fide* question of title involved and, ... recovery of possession of any immovable property under this section shall be no bar to the institution of an action, suit or proceeding of a civil nature in the High Court for trying the title thereto."

Counsel for the appellant contended that, as on the pleadings there was clearly a question of title involved in the present proceedings, the effect of section 70(4) was to oust the jurisdiction of the Magistrates' Courts. He agreed that the point was not taken at the trial but said, in my opinion perfectly correctly, that where it was said there was no jurisdiction and that proceedings were accordingly a nullity there was nothing to prevent the point being taken by either of the parties or by the Court itself at any stage.

In order to deal with the matter it is necessary to consider the extent of the jurisdiction given to Magistrates' Courts by sections of the Courts Ordinance which have been quoted. Thereafter there arise in the present case two separate and distinct questions. The first is whether the question of

jurisdiction or no jurisdiction is to be decided on the pleadings alone or whether it is to be decided on the pleadings and the proceedings at the trial. The second question is whether once it is decided which is the appropriate body of material to be considered ouster of jurisdiction has been made out.

Before proceeding further it will be desirable to consider the position in England because it is clear that in enacting the somewhat difficult provisions of the Courts Ordinance in question the legislature had in mind certain provisions of the English legislation to which I shall refer.

So far as my understanding goes until 1838, at any rate after the Statute of Gloucester of 1278, no Court in England other than the King's Courts had jurisdiction in matters relating to the ownership or possession of land.

Then, in 1838, Parliament enacted the Small Tenements Recovery Act of that year. That Act, which is still in force, gives Justices of the Peace jurisdiction in the case of small tenements where the rent does not exceed £20 a year to give possession to the landlord where the tenancy has expired or been terminated.

The modern County Courts were created by the County Courts Act of 1846. Section 58 of that Act provided that "the Court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments ..... shall be in question", but section 122 gave the Court a jurisdiction similar to that enjoyed by Justices under the 1838 Act in relation to the possession of small tenements but extending to premises where the rent did not exceed £50 a year.

The 1856 Act gave jurisdiction by consent where title incidentally came into question and in section 50 re-enacted the provisions as to the recovery of possession of small tenements contained in section 122 of the 1846 Act.

The position then was that prior to the enactment of the County Courts Act, 1867, which came into operation on 1st January, 1868, a landlord who wished to recover possession of premises had two courses open to him, apart from his right to take proceedings in the High Court.

In the first place if the value of the premises did not exceed £20 a year he could take proceedings before Justices under the Small Tenements Recovery Act, 1838. If he did so, the jurisdiction of Justices under the Act was not ousted by the defendant *bona fide* setting up the title of a third person and any such question could be heard and determined (See *Rees v. Davies*[1]).

Or, alternatively, where the value of the premises did not exceed £50 a year he could take proceedings in the County Court by reason of section 122 of the 1846 Act (later replaced by section 50 of the 1856 Act). The provisions of that section, however, were limited by section 58 of the 1846 Act which provided that the Court should not have cognizance of any action in which title was in question and accordingly when title came in question the jurisdiction of the Court was ousted.

The 1867 Act provided that actions of ejectment might be "brought and prosecuted" in the County Court and that the Court should have jurisdiction to try any case in which the title to hereditaments "shall come in question" but only where the value did not exceed £20 a year. The position in the County Court then was that where the value of the premises did not exceed £20 a year the landlord could either sue for ejectment or could sue for possession under section 50 of the 1856 Act and in neither case was the jurisdiction ousted by reason of a question of title being in issue. But if the value was over £20 but did not exceed £50 he could still proceed but only under section 50 of the 1856 Act and if a question of title arose then the jurisdiction was still ousted by reason of section 58 of the 1846 Act.

The consolidating Act of 1888 repealed all previous Acts. It re-enacted (sections 56, 59 and 60) the provisions of the 1867 Act relating to actions of ejectment but raised the monetary limit of the jurisdiction to £50 a year. Sections 138 and 139 re-enacted the provisions of section 50 of the 1856 Act relating to actions for possession but retained the old monetary limit of £50. (In both cases the amount was raised to £100 by the 1903 Act).

After the passing of the 1888 Act there was, therefore, as regards jurisdiction nothing to choose between the action of ejectment and the action of possession. In each case the monetary limit was the same and in neither case provided it came within the monetary limit was there any question of ouster of jurisdiction by reason of the question of title being involved. The two forms of proceedings, however, remained distinct and this was of importance in relation to questions of appeal (See *Millett v. Ballard*[2]).

The 1888 Act and the Acts amending it were in their turn replaced by the 1934 Act which is the present statute. By sections 40, 48 and 51 of that Act the Court "shall not have jurisdiction to hear and determine ..... any action for the recovery of land ..... or any action in which the title to which

any hereditaments is in question" except where the annual value does not exceed £100 a year. The 1934 Act does not contain any provisions as to the possession of small tenements corresponding to the provisions of sections 138 and 139 of the 1888 Act which were repealed by it. But it is to be observed that the expression "action for recovery of land" takes the place of the expression "action of ejectment." This change was presumably made in consequence of the decision of the Court of Appeal in 1904 in the case of *Millett v. Ballard*[2] *supra* where it was held that there was a distinction between actions of ejectment on title and actions for the recovery of small tenements under sections 138 and 139 of the 1888 Act, and it is clear that the intention of the legislature in making the alteration of wording was that both types of action should be included in the expression "action for the recovery of land."

Much of what has been said would at first sight appear to be of purely historical interest. It has, however, to my mind, a vital bearing on the question of construction of the Courts Ordinance with which I am concerned in the present case because during the period when the distinction between the two classes of proceedings, that is to say on the one hand proceedings for possession under section 122 of the 1846 Act (or the sections which replaced that section in the 1856 and 1888 Acts) and on the other hand proceedings such as ejectment where the title to land was involved was of importance, a distinction was drawn between the classes of materials on which a decision as to jurisdiction should be based.

The general rule was (and is) that where a question of title to hereditaments (which means land —see *Tomkins v. Jones*[3]) appears on the face of the proceedings the jurisdiction of the County Courts is ousted except where the value of the land is within the statutory monetary limit. That was decided in 1846 at the very commencement of the Acts in the case of *Tinniswood v. Pattison*[4] and three years later in even more emphatic terms in the case of *Timothy v. Farmer*[5] and as recently as 1954 it was said by Evershed M.R. in the case of *Lea v. Moore*[6] referring to section 51 of the 1934 Act:

". . . . . it is, I think, clear that if, on the face of the proceedings, the title was in question, the judge could not go into the matter at all . . . . . ."

This statement is subject to the qualification that it is clear on the pleadings that the question of title does really and *bona fide* come in issue. As was said by A. L. Smith L.J. in the case of *Howorth v. Sutcliffe*[7]:—

"It has been held — and in this I agree — that the mere assertion by the plaintiff of title to a hereditament of over £50 in value by the year is not sufficient to show that the action could not have been commenced in the county court; but, in order to show that the plaintiff could not sue in the county court, he must establish the fact that a question of title did really and *bona fide* come in issue; not merely that the defendant had so pleaded that it possibly might do so, but that in reality it must do so"

and it was held in the case of *Lloyd v. Jones*[8] where a defence of custom was set up in answer to a claim for trespass and where it was held that no such custom could exist in point of law "the jurisdiction of the County Court cannot be excluded by the pretence of a custom which has been so long and so solemnly determined to have no valid existence."

On the other hand, where proceedings were taken for possession under section 122 of the 1846 Act (or the later corresponding sections) it was held, again from the very commencement, that where a defence was raised which on the face of it would raise a question of title it was the duty of the Judge to inquire into the facts upon which such a defence was based. That was decided in 1848 in the case of *In re Fearon v. Nowall*[9]. That was a case where it was argued for the defendant that in the first place his bare appearance at the County Court to shew cause took away the jurisdiction of the Court and, in the second place, that because it was alleged that notice to quit which had been given was insufficient to determine the tenancy, again the Court had no jurisdiction. The relevant portion of the judgment by Erle J. reads as follows:—

"In this case a rule for a prohibition to the county court of Surrey was moved for on two grounds: first, that the Judge had no jurisdiction to proceed, under . . . s. 122, where the tenant appeared and showed any cause against proceeding, whether good or bad. The words of the statute are, "if the tenant shall not appear and show cause to the contrary;" and in my opinion those words require the tenant to show such cause as constitutes in the opinion of the Judge a defence. The construction contended for would render this part of the statute nugatory. The second ground was, that the notice to quit proved by the landlord did not determine the tenancy; that the Judge had no jurisdiction unless the tenancy was determined by a legal notice to quit; and that his mistaken decision upon a fact of jurisdiction was of no avail. It is unnecessary to say whether the Judge's decision on the fact was right, because it is clear that he had jurisdiction over the question of fact, and that it was his duty to commence the inquiry, and therefore his decision is now conclusive."

The position was set out with great clarity by Channell B. in the case of *Pearson v. Glassbrook*[10]:—

"There was formerly no power in the county courts to try questions of title, nor has any power been given to them by . . . . . but by these acts, where the relation of landlord and tenant exists, the judge may determine questions arising out of it. It is not, however, enough to entitle the landlord to this remedy, that he should state the relation to exist; in order to determine whether the alleged tenancy has been put an end to, the judge must first see whether it exists, and for that purpose must examine into the case."

It is of interest, and of some small importance to note that these principles which were applied in relation to cases under section 122 of the County Courts Act,

1846, have also been applied to cases other than cases under the Small Tenements Recovery Act arising before Courts of Summary Jurisdiction in England. As has been seen the ancient rule of the common law is that justices have no jurisdiction to decide a question of title to real property and so when such a question does arise before them as, for example, in cases of trespass their jurisdiction is ousted. It has, however, been consistently held that to oust the jurisdiction of justices on this account it is not sufficient for a defendant merely to assert some claim of right but it is for the justices themselves to determine whether or not upon the evidence before them a *bona fide* question of title is raised. The authorities on this point are to be found in *Russell on Crimes*, 10th Edition, Vol. 2, Appendix 2 and in *Stone's Justices' Manual*, 1947 Edition, at page 202, and it is not necessary to discuss them here in detail.

Having made these observations I now return to section 70 of the local Courts Ordinance. It seems to me clear that the jurisdiction given to Magistrates' Courts (and Sessions Courts) by that section is similar to that given to the County Court by section 122 of the 1846 Act, that is to say, a jurisdiction to decide questions of possession where no question of title is involved. It is not similar to the jurisdiction given to Courts of Summary Jurisdiction under the Small Tenements Recovery Act, 1838, for as has been seen under that Act justices could deal with questions of title. Nor is it similar to the jurisdiction given to the County Court by section 40 of the 1934 Act in actions "for the recovery of land" for here again within the prescribed monetary limits the court has jurisdiction to decide questions of title. That being so, I am compelled to the conclusion that the issue of whether "there is a *bona fide* question of title involved" is to be decided not in accordance with the principles applied by the English Courts to questions arising by reason of section 58 of the 1846 Act or section 56 of the 1888 Act or section 51 of the 1934 Act but in accordance with the principles applied in the case of section 122 of the 1846 Act and the various sections which took its place from time to time until repealed by the present Act in 1934. In other words, the question is not to be decided on the pleadings alone but on the proceedings as a whole.

Such a conclusion is the only one to my mind, which accords with the actual wording of sub-section (4) of section 70. The jurisdiction is not excluded "where there is a question of title involved." These words are the same to all intents and purposes as the words used in the various sections of the County Court Acts which have been considered relating to the jurisdiction of the County Court in actions which are not merely for possession and in relation to which the weight of authority is in favour of the issue of jurisdiction being decided on the pleadings alone. But these are not the words used. The actual words which are used to exclude jurisdiction are "where, in the opinion of the Court, there is a *bona fide* question of title involved". On the ordinary canons of construction the expressions "in the opinion of the Court" and "*bona fide*" are not to be disregarded and the only reasonable, indeed the possible, way to give effect to them is to apply the principles which have been applied in the past in determining the jurisdiction of the County Court in matters of possession or the jurisdiction of Courts of Summary Jurisdiction where questions of title arise incidentally.

I am fortified in the conclusion I have thus come to by a consideration of the case of *Re Welsh Brick Industries, Ltd.*[11]. In that case the Court of Appeal was concerned with an appeal from an order of a County Court Judge for the compulsory winding-up of a company. The petitioning creditor had previously sued on his debt under R.S.C. Order 14 in the King's Bench Division and on a summons for judgment the Registrar gave the company unconditional leave to defend. Despite this the County Court Judge in the winding-up proceedings went into the evidence that was before him to consider whether or not there was a *bona fide* dispute regarding the creditor's debt. In the event he found that the debt was owing and that the company could not pay its debts and made a winding-up order. Against this decision the company appealed on the ground that the alleged debt was the subject of a *bona fide* dispute and that accordingly the winding-up petition should have been dismissed and in support of this relied on the order of the Registrar giving unconditional leave to defend. In the course of his judgment Lord Greene M.R. quoted a statement in *Buckley on the Companies Acts*, 11th Edition, to the effect that a winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is *bona fide* disputed by the company and went on to observe:—

> "I do not think that there is any difference between the words "*bona fide* disputed" and the words "disputed on some substantial ground." I cannot accept the proposition that, merely because unconditional leave to defend is given, that of itself must be taken as establishing that there is a *bona fide* dispute or that there is some substantial ground of defence. The fact that such an order is made is no doubt a matter which the winding-up court will take into consideration and to which the winding-up court will in due course pay respect, but I cannot regard it as in any way precluding a winding-up judge from going into the matter himself on the evidence before him and considering whether or not the dispute is a *bona fide* dispute, or, putting it in another way, whether or not there is some substantial ground for defending the action."

As this is the first occasion on which this question of jurisdiction has been litigated, I think I should make it clear for the benefit of Magistrates who will, no doubt, look to what I have said that I am not deciding that in every case it is necessary for the Magistrate to try the case out to the very end before deciding whether or not he has jurisdiction. What I am deciding is that the question is not necessarily and exclusively to be decided on the pleadings. If it were so decided the door would be open to very great abuses. It would then be open to a defendant to cause delay and gain time merely by filing a defence for which he had no real grounds and then taking the point of jurisdiction and thus get rid of the Magistrate's Court proceedings and force the plaintiff to start afresh in the High Court. On the other hand, to refuse to consider the point until all the evidence has been heard might well involve the parties in unnecessary expense as, for instance, in a case where the parties agreed from the very beginning that the question of title was in dispute.

Speaking broadly, but I do not think inaccurately, the question of title is involved in a case where the defendant alleges that the plaintiff's right, title and interest in the land concerned is different from that claimed by the plaintiff himself and where that difference is material to the case. I will illustrate what I mean by giving three examples of possible sets of circumstances which may arise.

In the first place, the plaintiff may say that he is the proprietor of the land, that the defendant is his tenant and that the defendant's tenancy is terminable by a month's notice which has been given. The defence may be that the period of notice is three months or that notice has not in fact been given or that the tenancy is entitled to the protection of the Control of Rent Ordinance. Here there is no question of title involved and the Magistrate clearly has jurisdiction.

Again, in a similar case the defendant may plead that the plaintiff is not the proprietor of the land but only owns a lease which has some years to run. Here again the Magistrate has jurisdiction for although on the face of the pleadings the question of title is disputed it is not involved because the dispute is on a point which it is not necessary to determine for the purposes of the case.

Or yet again, in the third place, the defendant may plead that the plaintiff is not the registered proprietor (or more probably in practice, that the plaintiff is not the chief tenant) but that the proprietor or chief tenant as the case may be from whom he holds his tenancy is somebody else. Here the question of title may well be involved and if the Magistrate forms an opinion before the end of the case that this question will have to be seriously considered and is not to be put aside as entirely groundless a *bona fide* question of title is involved. In such a case and as soon as he has formed such an opinion his jurisdiction is at an end and he should decide accordingly. Whether his opinion is correct and whether there are good grounds for it will, of course, be subjects for consideration in this Court should his decision be appealed against.

Returning to the present case, it is impossible to say at what stage or on what materials the learned Magistrate decided that there was not a *bona fide* question of title involved and that he had jurisdiction, for as has been said the question of jurisdiction was not raised before him. It must be assumed, however, that he did so decide at some stage of the proceedings for he tried the case out to the end and decided it which he would not have done if he had formed the opinion at any stage or on any material that his jurisdiction was ousted. The point, however, does not arise for what I have to decide at the present stage of the proceedings is whether the appellant has made out that the Magistrate was wrong in deciding that he had jurisdiction. In doing so, for the reasons I have stated, I must decline to confine my attention to the pleadings and must consider the whole of the material before me, that is to say, the pleadings and the evidence. On the pleadings, a question of title clearly arises. The plaintiff says "I am the tenant and you are my sub-tenant." The defendant says "I deny that you are the tenant. I am a sub-tenant holding under somebody else." But when we come to the evidence we find that not only was this allegation of the defendant not made out, which probably would not have been enough to save the jurisdiction, but no attempt was made to make it out. At no time did the defendant say a single word in evidence to deny the plaintiff's tenancy. All he said was that it was not the plaintiff who signed the alleged tenancy agreement under which he purported to be occupying the premises as sub-tenant. Indeed, reading the evidence as a whole, the only question that was seriously disputed was whether in fact the defendant tendered rent to the plaintiff's mother, a question which in the circumstances could only have a bearing on the question of whether the defendant was entitled to the protection of the Control of Rent Ordinance.

It may be that in all the circumstances of the case the defendant could have argued that certain matters operated in his favour by way of estoppel though as far as can be seen from the Record the question of estoppel was not raised at the trial. I will deal with

the question of estoppel on its merits shortly but at this stage I would say that I fail to see that it had any bearing on the question of jurisdiction. It may not be universally true to say that estoppel is only a rule of evidence, though here by reason of its statutory basis there may be more support for such a view than there is in England. Nevertheless, it cannot be said that there is a question of title involved where what is in dispute is not the existence or the nature of the title but whether there exist grounds, whether they be grounds of evidence or grounds of law, which prevent its being set up in any individual case.

That, of course, is not to say that if there was any matter of estoppel involved in the present proceedings which could avail the defendant he was not entitled to the benefit of it and that brings me to a consideration of the third group of grounds of appeal.

Now, whether the contract of tenancy was an oral one as alleged by the plaintiff or whether it was the written one set up by the defendant is only of importance in relation to this question of estoppel for the provisions of the two agreements so far as they are material to the present proceedings are the same. The alleged oral agreement provided for termination of the tenancy on three months' notice at any time. The alleged written agreement provided for its termination on three months' notice after the expiration of the first three years which had in fact expired prior to the notice to quit dated 22nd April, 1954, by the plaintiff's solicitor. As I said earlier it is significant that this was the second notice to quit addressed to the defendant and that the earlier one gave him one month's notice only. Though this does not necessarily mean that the plaintiff was not telling the truth when he said there was an oral agreement between himself and the defendant as to the tenancy it does suggest very strongly that between the dates of the two notices he, or his solicitor, had come to know of the existence of the written agreement and had deemed it prudent to take steps to protect themselves against any defence based upon it which might be adopted. Taking such a course, though a perfectly proper one, may or may not have amounted to adoption of the written agreement and at the lowest it probably estopped the plaintiff from setting up the alleged oral agreement.

Nevertheless, even if the plaintiff were estopped from setting up the alleged oral agreement and if he were in law bound to the written one the real question which arises is whether he was estopped by anything in his conduct from saying that he was entitled to terminate it by himself giving notice in accordance with its provisions.

What did he do? He left his premises in the care of his father and his father, with or without his authority and with or without disclosing that he was not himself the tenant, let the defendant into possession under a written contract of tenancy which *ex facie* did not disclose the fact that he was not the tenant. In the circumstances, the plaintiff is no doubt estopped from denying that his father was his agent. He is no doubt estopped from denying that he is bound by the terms of the written agreement which indeed he admitted in effect when he substituted three months' notice for one month's notice to terminate the tenancy. But how can it be said that if he is bound by the agreement he is not equally entitled to take advantage of such of its provisions as are in his favour?

It is said that if he is allowed to do so and, in particular, if he is allowed to terminate the agreement in accordance with its own provisions the defendant may be placed in a difficult position if in the future the legal personal representative of the deceased father comes on the scene and sues him for rent. It is said that he would then be in the difficulty that as it was the deceased father who let him into possession he would be estopped from denying the personal representative's title. To my mind, there are two answers to that. In the first place, I think that the circumstances postulated are highly hypothetical. In the second place, I do not think that any difficulty really exists. Quite apart from the consideration that the written agreement contained no provision for the payment of rent, I am satisfied that payment in pursuance of a judgment in the present proceedings will be a sufficient defence or if it is not that the facts of the case will either operate to create a counter estoppel against the personal representative or afford grounds for a counter-claim against him based on misrepresentation.

There can, of course, be no question of the defendant being in danger of further eviction proceedings. Unless he can persuade the Court of Appeal to intervene in his favour he is going to be evicted as a result of the present proceedings and he cannot be evicted twice.

The appeal is dismissed with costs.

Appeal dismissed

Solicitors: *Das & Co: R. R. Chelliah.*